

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

RICKY L. SMITH

CACR 06-169

APPELLANT

March 7, 2007

V.

APPEAL FROM THE CIRCUIT COURT
OF JEFFERSON COUNTY
[NO. CR-05-107-1]

STATE OF ARKANSAS

APPELLEE

HONORABLE BERLIN C. JONES,
JUDGE

REMANDED TO SETTLE THE
RECORD

SARAH J. HEFFLEY, Judge

Appellant Ricky L. Smith was charged with first-degree murder in connection with the death of Nicole Sharpe. A jury in Jefferson County found him guilty of second-degree murder, for which he was sentenced to twenty years in prison. Appellant raises several issues on appeal, including the contention that he was denied the right to a speedy trial. For the reasons explained below, we remand to settle the record.

The record reflects that appellant filed his motion to dismiss alleging a speedy-trial violation on April 5, 2005. The record contains a scheduling order setting a hearing for the

motion on May 17, 2005. The trial court's order denying appellant's motion to dismiss contains language indicating that a hearing was held on May 17. Although appellant designated the entire record in his notice of appeal, the record contains no transcript of a hearing held on that date.

We have not been provided the trial court's docket entries pertinent to this case. However, the record before us indicates that a hearing was held on May 17, 2005. Rule 6(e) of the Rules of Appellate Procedure - Civil, made applicable to criminal cases by Rule 4(a) of the Rules of Appellate Procedure - Criminal, provides in relevant part that:

If anything material to either party is omitted from the record by error or accident or is misstated therein, ... the appellate court on proper suggestion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted.

Because the hearing that was purportedly held on May 17 has not been included in the record, we remand for the record to be settled.

We note that the State previously filed a motion in this court seeking permission to supplement the record with docket entries from another case involving appellant. On remand, we caution that settling the record is not a device to be used to supplement the record to include evidence that was not properly or timely presented to the trial court. *Rameriz v. State*, 91 Ark. App. 271, 209 S.W.3d 457 (2005).

Remanded to settle the record.

VAUGHT and MILLER, JJ., agree.